

UNITED STATES CIVIL SERVICE COMMISSION

BULLETIN

*Washington, D.C. 20415*  
May 25, 1977

BULLETIN NO. 300-40

SUBJECT: GAO Decision Awarding Backpay for Retroactive  
Temporary Promotions of Employees on Overlong  
Details to Higher Graded Jobs (B-183086)

*To Heads of Departments and Agencies:*

Action date:

Information Requested  
in 90 Days

1. On March 23, 1977, the General Accounting Office affirmed its decision (B-183086 of December 5, 1975) awarding backpay for retroactive temporary promotions of employees detailed to higher graded positions beyond 120 days without prior Civil Service Commission approval. Entitlement depends on the employee's meeting such conditions as the Whitten Amendment time-in-grade requirement or the statutory requirements for assignment to supergrade positions. GAO views retroactive temporary promotion as the mechanism for providing a backpay award to an employee who has been improperly assigned to a higher graded position without appropriate compensation. The ruling makes clear this does not provide entitlement to a permanent promotion. In his transmittal memorandum the Comptroller General advised agencies they may receive, compute, and settle employee claims but should refer doubtful cases to GAO (Attachment 1).

2. In a companion decision issued on the same date, GAO held that temporary promotions to supergrade positions may be made only with prior approval of the Commission and that even after approval is granted, they may not be made retroactively (B-186064, Attachment 2).

3. Since the decision rests on an interpretation of Commission instructions concerning employee details and temporary promotions, we are providing additional information to assist agencies in proper application of that decision. Agencies should review all current details to higher graded positions to assure that they are in compliance with Commission requirements. We are also asking agency heads to personally initiate measures to prevent similar violations of Commission instructions in the future, and to inform the Commission of those measures within 90 days from the date of this Bulletin.

INQUIRIES: Program Development Division, Bureau of Recruiting and  
Examining, 63-26817 or code 101, X-26817

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4. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level. As the decision notes, the Supreme Court recently ruled in United States v. Testan that classification actions upgrading a position may not be made retroactive so as to entitle an incumbent to backpay. Care must be taken to distinguish between employee claims based on details to higher graded positions, and to claims based on a classification action; only the former may be considered for retroactive correction under the decision.

#### The GAO Decision

5. The case concerns a GS-14 deputy and a GS-13 employee who served for prolonged periods in the higher graded positions of chief GS-15 and deputy GS-14, respectively. The GS-14 deputy performed as acting chief because his position description provided he would serve in absence of the chief. The GS-13 employee was designated to serve as acting deputy by agency memorandum. The agency took no other official detail or temporary promotion action respecting the employees and did not prepare Standard Forms 52 to reflect either assignment. Following return to their regular duties after the agency filled the chief position with another employee, the employees appealed to the former Board of Appeals and Review (BAR, now the Appeals Review Board) which held they should have been granted retroactive temporary promotions and advised them to pursue their claims for backpay to the General Accounting Office.

6. The Comptroller General agreed (B-183086, December 5, 1975) with the BAR decision that the employees' prolonged service in higher graded positions really amounted to overlong details. Since the agency had not secured Commission approval to continue the details beyond 120 days, as basic FPM chapter 300 instructions require, the employees were deemed to have been temporarily promoted from the 121st day until returned to their regular duties. He further ruled, for purposes of the backpay statute (5 U.S.C. 5596), that an agency has no authority to continue an employee on detail to a higher graded job beyond 120 days, without prior Commission approval. If the agency wishes to keep the employee in that assignment without prior Commission approval, it cannot continue the detail; it must confer a temporary promotion--provided statutory requirements are met--to cover the remainder of the period for which the detail would have run.

7. Because of the need to address questions about that decision, the Comptroller General temporarily suspended action on employee backpay claims. He now has issued a new decision (B-183086, March 23, 1977, Attachment 1) to affirm and clarify the previous one.

Implementation of GAO Decision

8. Employees (including former or retired employees) should file their claims with the agency in which the detail occurred, since it is responsible for adjudicating the claim and taking any necessary corrective action. As the Comptroller General's instructions permit claims also may be submitted to GAO. Employees should not submit claims to the Commission for payment.

The following is to assist agencies in carrying out the Comptroller General's decision:

A. Information Sources. Agency officials and employees seeking information should contact their local personnel office, unless otherwise instructed by their agencies.

Evidence for Commission-approved extension of a detail should generally appear on a completed Standard Form 59 filed on the permanent side of the employee's Official Personnel Folder.

The Commission's backpay regulations are in Part 550 of Subpart H of title 5, CFR--expanded regulations appeared in the Federal Register on March 25, 1977. Supplementary instructions including pay computation procedures are in FPM Supplement 990-2, "Hours of Duty, Pay, and Leave, Annotated" Book 550, Subchapter 8; revised instructions for the new regulations will be published in the near future.

GAO's claim filing and processing regulations are in chapter 1, subchapter C (especially Part 31) of title 4, CFR. Instructions appear in the "GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4."

Agency personnel officials requiring further information should contact their local Commission offices, or:

For Guidance On:

Contact:

CSC detail policies

Office of Staffing Policies  
Bureau of Recruiting and Examining  
632-6817

CSC backpay regulations  
and FPM instructions

Pay and Leave Administration Section  
Bureau of Policies and Standards  
632-5604

Claims processing;  
GAO statute of limitations

Claims Division  
General Accounting Office  
275-5788

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Employees who do not agree with their agency's interpretation of Commission detail or backpay instructions should direct their concerns to the appropriate Commission regional office (for installations outside the Washington, D.C., metropolitan area) or to the Bureau of Personnel Management Evaluation (for headquarters and installations in the Washington, D.C., metropolitan area).

B. Scope of Commission instruction. The Commission's instruction for securing prior approval for continuation of details beyond 120 days relates only to details within the same agency of employees serving in competitive positions and, in the excepted service, positions under the General Schedule. Since the GAO decision follows the Commission's instruction, it would not apply to positions beyond that scope, e.g., Postal Service jobs.

C. Statutory and regulatory requirements for promotion. When an employee is detailed to work outside his or her regular position, he or she does not have to meet placement requirements for that position. When the employee is promoted, whether temporarily or permanently, statutory and Commission requirements which govern promotions are to be applied. As GAO noted: "It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion." For example, the Whitten Amendment generally requires an employee to serve at least 1 year in the next lower grade before promotion in a General Schedule position. If an employee, otherwise eligible for remedy under the decision, has not completed that 1-year service requirement when the 121st day is reached, entitlement to retroactive temporary promotion and backpay would only be for that portion of the detail served after the 1-year requirement was completed.

Examples of other requirements to be met:

Citations:

Prior Commission approval of proposed appointee's qualifications for GS-16/18 positions.

5 U.S.C. 3324;  
5 CFR 300.301;  
FPM chapter 300, subchapter 3.

Minimum Commission qualification standards for competitive jobs.

5 U.S.C. 3308 and 3361;  
FPM chapter 338, subchapters 4 & 5;  
FPM Supplement 296-31, Appendix B, S 338A;  
Handbooks X-118 and X-118C.

Prior Commission approval of qualifications and/or pay rates of proposed appointees to certain scientific and professional positions (e.g., P.L. 313-type positions)

5 U.S.C. 3325 and 5361;  
5 CFR 534.301;  
FPM chapter 300, subchapter 10;  
FPM chapter 534, subchapter 3.

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D. Competitive promotion procedures. Competition for selection is an essential characteristic of the merit system, whether for initial appointment or for internal advancement in the competitive service. The Commission's merit promotion instructions generally require application of competitive promotion procedures when selecting employees for details of more than 60 days to higher graded positions or to positions of known promotion potential. Application of competitive procedures is required for temporary promotions which will exceed 120 days. Therefore, an employee who served in a higher graded job beyond 120 days without Commission approval generally should have been initially selected under competitive procedures for that assignment. There may be instances where competition for the assignment should have but did not occur. Because of the limited applicability of the decision and because of the difficulty of applying retroactivity in this type of case, agencies will not be required to reconstruct past actions for purposes of retroactively granting promotion under competitive procedures in cases arising under that decision.

E. Retroactive time limits for filing claims. By statute (31 U.S.C. 71a), GAO only has authority to accept claims received in that office "within 6 years after the date such claim first accrued." If any part of the claim accrued more than 4 years ago, GAO requests that it be submitted to the Claims Division, General Accounting Office, to stop the statute of limitations from running. All questions concerning the time limitation should be directed to GAO.

F. Acceptable documentation to substantiate a detail. GAO regulations provide that claims are to be "settled on the basis of facts as established by the Government agency concerned and by evidence submitted by the claimant" (4 CFR 31.7).

Commission instructions require agencies to record details in excess of 30 calendar days on SF 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder (FPM Supplement 296-31, Book II, Subchapter S3-13). While in the case GAO decided, this type of proof was not in the Official Personnel Folder, evidence in the form of agency memoranda reflecting the assignment was considered acceptable documentation. In addition, the personnel officer or that official's superior may certify in writing that reliable sources verify that the duties claimed were performed.

In the absence of the above documentation the employee may provide other acceptable proof including:

- copies of Standard Forms 50 or 52, or official memoranda of assignment from the employee's possession,
- a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed, or

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- a decision under established grievance procedures.

G. Claims Procedure. There is no printed CAO form to complete for submitting the claim. GAO's regulations provide the claim must be submitted in writing, over the signature and address of the employee (or the employee's authorized agent or attorney), and presented to the appropriate office designated by the agency. To facilitate adjudication the claim should include:

- citation of Comptroller General decision B-183086, March 23, 1977, as basis for the backpay request,
- starting and ending dates of the detail,
- title, series, grade, and organizational location of the position to which detailed, and
- supporting information in the employee's possession to show the detail occurred.

H. Processing corrective actions. When an agency determines an employee is entitled to retroactive temporary promotion, appropriate paperwork should be completed to permit receipt of backpay and to update the Official Personnel Folder. Here is a summary of instructions from FPM Supplement 296-31, Book V:

Process a Standard Form 50 (SF 50), Notification of Personnel Action, using Personnel Action Code 702 Promotion - Temp. Effective date of the action should be the first day after expiration of the 120-day detail. Block #30, Remarks, should indicate Comptroller General Decision B-183086; 5 CFR 550, Subpart H; and information pertaining to the time limitation placed on the temporary promotion. If the employee is to be retained at the grade level to which temporarily promoted, the agency personnel office should take action to remove the temporary limitation placed on the last promotion by processing another SF 50 citing Personnel Action 702 Promotion - Permanent. If the employee was returned to the position from which temporarily promoted, process another SF 50 citing Personnel Action Code 715 - Chg to Lower Grade.

Instructions for making a temporary promotion permanent or for ending a temporary promotion appear in FPM chapter 335, subchapter 4-4.

#### Future Agency Actions

9. At various times over the last several years, we have specifically cautioned agencies about the adverse effects on employees of abuse of details. During our nationwide review of basic merit system

integrity, we advised agencies to study their control and review mechanisms for assuring proper use of employee details. Our Federal Personnel Manual instructions say temporary promotions are generally the most appropriate way to provide temporary services in a higher graded position. Details, on the other hand, are intended only for brief service (FPM chapter 300, S 8-4e) in which no other staffing arrangement would be practical.

10. In addition to providing a remedy for employees who have served beyond proper time limits, the decision underscores the need for agency heads to see that in the future all levels of management, including first line supervisors, are made aware of the circumstances in which details are permitted and the restraints on their use. The agency personnel office has a key, continuing role in advising managers about the use of details or other means for getting the job done.

11. For a detail expected to last beyond 30 days, the agency officials concerned are responsible for initiating a formal request for personnel action for prior internal approval and referral to the personnel office. If it should appear necessary to continue a detail beyond 120 days, an agency must request the Commission's prior approval to extend the detail for up to a maximum of 120 additional days. (Only one extension may be permitted.) Such a need should be anticipated well in advance of the 120th day to give the Commission a reasonable time to consider the request before the detail would otherwise end.

12. Prevention of the kind of situation disclosed in these cases is essential. To this end, we ask all agency heads to develop affirmative policies as well as operating procedures, and to inform the Commission within 90 days of actions taken. In making any changes in existing policies and practices affecting employees, agencies are reminded of their obligation to consult or negotiate, as appropriate, with recognized labor organizations under Executive Order 11491, as amended. Replies should be directed to the attention of the Director, Bureau of Recruiting and Examining.


#### Future Commission Actions

13. We are starting a review of present Commission instructions on details, as well as a study of acting assignments, to determine whether new or revised policies are necessary. As the study progresses, we will consult as necessary with agencies, labor organizations, or other interested parties.

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14. We cannot anticipate all questions now. If a need develops for additional advice of general interest concerning areas of Commission responsibility related to the decision, we will issue additional instructions.

  
Raymond Jacobson  
Executive Director

Attachments